

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JEREMY KERR,)	CASE NO. 3:15 CV 2006
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
v.)	MAGISTRATE JUDGE
)	WILLIAM H. BAUGHMAN, JR.
NEIL TURNER,)	
)	<u>REPORT & RECOMMENDATION</u>
Defendant.)	

Before me by referral¹ in this matter of Jeremy Kerr's *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254² is a motion by Kerr for summary judgment.³ The State has responded in opposition to the motion.⁴

I note first that the State has only recently filed a return of the writ⁵ together with its submission of the underlying record of proceedings. Kerr, in turn, responded with a traverse⁶ filed the same day as the present motion re-presenting his motion for summary judgment.⁷

¹ECF # 8.

²ECF # 1.

³ECF # 16.

⁴ECF # 17.

⁵ECF # 14.

⁶ECF # 15.

⁷ECF # 16.

In this current motion, I further note that Kerr has denied that the state court record is entitled to a presumption of correctness.⁸

As the State observes, summary judgment is not allowed when material facts are in dispute.⁹ Here, Kerr's claim that the state court's factual findings are incorrect of itself alleges a dispute as to material facts underlying this conviction.

Thus, I recommend that without prejudice to a final disposition of the petition upon full review, the present motion for summary judgment be denied.

Dated: February 9, 2016

s/ William H. Baughman, Jr.
United States Magistrate Judge

⁸*Id.* at 3.

⁹ECF # 17 at 1.